

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ALICIA A. COHEN,

Plaintiff,

v.

RONALD A. COHEN, a/k/a Rafi Cohen,  
Rafael Cohen, Rafa-El Cohen, Rafael  
Chaim Ha Cohen, Rafael Chaim Cohen,  
Ron Cohen, and Ronnie Cohen,

Defendant.

C.A. No. 19-1219-MN

**DEFENDANT'S MOTION FOR LEAVE TO TAKE DE BENE ESSE DEPOSITIONS  
OF WITNESSES UNAVAILABLE FOR TRIAL**

NOW COMES Defendant Ronald A. Cohen, by and through counsel, and respectfully seeks leave to take *de bene esse* depositions of non-party witnesses.

Defendant submits that pursuant to Rule 45(c) of the Federal Rules of Civil Procedure and caselaw in this District as set forth in the Memorandum in support of this Motion, there is abundant precedent to allow for *de bene esse* depositions of non-party witnesses to preserve their testimony which is set for trial on March 29, 2020. There are witnesses who were identified in the Initial Disclosures and during discovery who are essential to the case in that they have relevant information that refute the allegations as stated in Plaintiff's original and amended Complaints. These witnesses have advised they are reluctant, unwilling or unable to attend a live trial in Delaware due to the fact they live

in other states including New York, Florida, Nevada, North Carolina and other states.

Their requests to be questioned through the *de bene esse* deposition process and through internet technology are due to inconvenience and health concerns caused by the current worldwide pandemic. Some are unable or unwilling to attend a live trial in Delaware because they are older, have preexisting medical conditions or otherwise feel vulnerable to trial given the current Pandemic (a/k/a Covid-19 or Coronavirus). Others would incur substantial expense by attending a trial that is anticipated to take approximately one week. Defendant submits contemporaneous with the filing of this motion a Memorandum which cites Rule 45 and precedent that support of this request.

Undersigned Counsel advised Counsel for the Plaintiff of this Motion and asked for Plaintiff's position. Counsel for Plaintiff did not respond.

WHEREFORE, Defendant Ronald A. Cohen, by and through counsel, respectfully requests that the Court enter an Order consistent with the Proposed Consent Order filed contemporaneous with the filing of this Motion and Memorandum in support thereof allowing the scheduling and taking of *de bene esse* depositions of non-party witnesses for purposes of preserving their trial testimony and that the depositions be taken through WebEx, Zoom, Microsoft Teams or similar technology.

Dated: January 5, 2021

THE JOHNSON FIRM LLC

A handwritten signature in blue ink, appearing to read "Chris Johnson", written over a horizontal line.

Christofer C. Johnson

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